BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ALICE BRYANT	)	
Claimant	)	
VS.	)	
	)	Docket No. 196,704
U.S.D. NO. 259	)	
Respondent	)	
Self-Insured	)	
AND	)	
	)	
WORKERS COMPENSATION FUND	)	

ORDER

Respondent appeals from a post-award preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on October 31, 1997, that awarded claimant certain medical benefits.

ISSUES

Respondent raised the following issue in its Appeal of Preliminary Hearing Order Dated October 31, 1997:

> "1. Whether the Administrative Law Judge exceeded her jurisdiction in granting the relief requested at the Preliminary Hearing."

In the Brief of Respondent In Support of Appeal of Preliminary Hearing Order Dated October 31, 1997, the issues were explained as follows:

> "1. Whether the Administrative Law Judge exceeded her jurisdiction by granting relief not requested in claimant counsel's Notice of Intent.

"2. Whether the Administrative Law Judge exceeded her jurisdiction by requiring respondent to provide a choice of three physicians from which claimant could choose."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing transcript and considering the briefs of the parties, the Appeals Board finds as follows:

Findings of Fact

(1) Claimant sustained a work-related injury on April 7, 1994.

(2) Claimant's primary treating physician was Stephen T. Sparks, M.D. Claimant was also seen by orthopedic surgeon Paul S. Stein, M.D., following a referral by Dr. Sparks.

(3) Claimant was last seen by Dr. Sparks on September 6, 1995. Claimant testified at the October 28, 1997, preliminary hearing that she had not returned to Dr. Sparks because the last time she saw him, Dr. Sparks told her he had done all he could do for her.

(4) Claimant testified at the regular hearing on May 1, 1996, that Dr. Sparks had released her from his care and was no longer treating her. Although Dr. Sparks testified at his August 15, 1996, deposition that claimant would need future medical care including prescription medication, he had in fact released her at maximum medical improvement.

(5) An Award was entered in this claim by Assistant Director Brad E. Avery on January 16, 1997, which provided, *inter alia*: "Claimant is entitled to future medical care upon application and review. In addition, respondent shall provide for the costs of an ongoing prescription for pain relief, as deemed necessary by her authorized physician."

(6) In March 1997 respondent was provided with medical bills indicating that claimant had gone to her family physician, Hugh I. Ekengren, M.D., for pain medication and he had, in turn, referred claimant to Ronald R. Manasco, M.D., for epidural steroid injections.

(7) In April 1997 respondent advised claimant that Dr. Sparks was the authorized treating physician and that the bills from Dr. Ekengren and Dr. Manasco and the prescriptions would be treated as unauthorized medical expenses.

(8) On August 25, 1997, claimant requested payment of the medical expenses claimant incurred with Dr. Ekengren and Dr. Manasco as authorized medical including reimbursement for the prescription medicine and for Dr. Ekengren to be designated as the authorized treating physician. Respondent denied these requests.

Conclusions of Law

As the Appeals Board has held on numerous occasions, in order for the Appeals Board to have jurisdiction to review a preliminary hearing order, either one of the specific jurisdictional issues listed in K.S.A. 44-534a(a)(2) must be raised or a party must allege that the administrative law judge exceeded his/her jurisdiction pursuant to K.S.A. 44-551(b)(2)(A). Neither of the issues raised by the respondent are jurisdictional issues which are listed in K.S.A. 44-534a(a)(2). Consequently, if the Appeals Board has the authority to review this preliminary hearing Order, it must be shown that the Administrative Law Judge exceeded her jurisdiction in granting the claimant the requested preliminary hearing benefits.

The preliminary hearing statute, K.S.A. 44-534a, specifically gives the administrative law judge authority to grant or deny medical compensation and temporary total disability compensation pending a full hearing. The preliminary hearing Order, which is the subject of this appeal, granted claimant's request for medical treatment and required respondent to submit a list of three physicians to claimant from which an authorized physician would be selected. The medical expenses claimant previously incurred with Dr. Ekengren were ordered paid as unauthorized medical, up to the statutory maximum.

The respondent first argues that the claimant's Notice of Intent letter and Application for Preliminary Hearing did not specifically request a change of physician pursuant to K.S.A. 44-510(c)(1). Respondent contends these are prerequisite procedures that must be followed before the administrative law judge has the authority to order respondent to submit a list of three physicians because respondent had never refused to authorize treatment. The Fund concurs with respondent's argument. The Appeals Board has reviewed the record and finds this argument fails to give rise to a jurisdictional issue. The respondent admits it was sent a Notice of Intent letter dated September 23, 1997, that specifically requested the authorization of Dr. Ekengren and his referrals. Further, counsel for the respondent participated in a discussion at the beginning of the preliminary hearing that was held on October 28, 1997, which indicates the parties were cognizant of what it was claimant was requesting at that hearing. Respondent's counsel even stated that respondent should be allowed to submit the names of three physicians.

K.S.A. 44-523 provides that the administrative law judge "shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to present evidence, [and] insure the employee and the employer an expeditious hearing . . . ." In Boeing Military Airplane Co. v. Enloe, 13 Kan. App. 2d 128, 131, 764 P.2d 462 (1988), *rev. denied* 244 Kan. 736 (1989) the Court of Appeals noted the "long-established policy that the Workmen's Compensation Act should be construed to allow 'the speedy adjustment of claims under it . . . .'" (Citations omitted.) Accordingly, the Appeals Board finds that the necessary procedures were followed and respondent was not denied proper notice or opportunity to be heard. There is no merit in respondent's argument that the Administrative Law Judge exceeded her authority in ordering the preliminary benefits.

The second issue raised by respondent is also found by the Appeals Board to be nonjurisdictional. The Administrative Law Judge awarded claimant medical treatment to cure and relieve her from the effects of her injury. The employer has the duty to provide such medical treatment pursuant to K.S.A. 44-510(a). The Administrative Law Judge found that the claimant's testimony and the medical records introduced at the preliminary hearing established this need. Accordingly, since K.S.A. 44-534a specifically gives the administrative law judge authority to grant medical compensation in a preliminary hearing order, the Administrative Law Judge did not exceed her jurisdiction when she ordered medical treatment with a physician to be chosen by claimant from a list provided by respondent. Implicit in her Order is a finding that either the treatment by Dr. Sparks was unsatisfactory or that Dr. Sparks, having released claimant from his care, was no longer providing treatment. Whether or not claimant met her burden of proof on these questions is not subject to Appeals Board review on an appeal from a preliminary hearing order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby, dismissed and the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated October 31, 1997, shall remain in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of December 1997.

BOARD MEMBER

c: W. Walter Craig, Wichita, KS
Robert G. Martin, Wichita, KS
Garry L. Howard, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director